



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Frederic B. O'Neal, Esq.
P.O. Box 842
Windermere, FL 34786

JUN - 1 2015

RE: MUR 6361
Tea Party and Frederic B. O'Neal in
his official capacity as treasurer, a
terminated federal political
committee
Tea Party, a Florida minor political
party

Dear Mr. O'Neal:

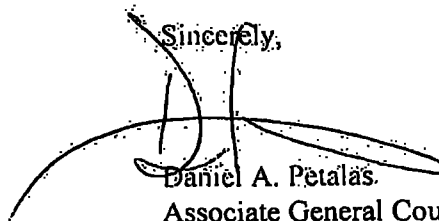
On September 2, 2010, the Federal Election Commission notified your clients, the Tea Party, a terminated federal political committee, and you in your official capacity as treasurer of the terminated committee ("Tea Party [Federal]"), and the Tea Party, a Florida minor political party ("Tea Party [Florida]"), of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"). Copies of the complaint were forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on May 21, 2015, voted to dismiss the allegations that the Tea Party [Florida] violated 52 U.S.C. §§ 30125(b), 30103, 30104, 30120, and 11 C.F.R. § 110.11. The Commission also found no reason to believe that the Tea Party [Federal] and you in your official capacity as treasurer violated the Act or Commission regulations as alleged in this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009).

If you have any questions, please contact Kasey Morgenheim, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel A. Petalas". The signature is stylized with a large, sweeping loop that extends to the left and then curves back to the right, crossing over itself.

Daniel A. Petalas
Associate General Counsel for Enforcement

Enclosure
Factual and Legal Analysis

ENCLOSURE

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Tea Party and Frederic B. O'Neal in his official capacity as treasurer (a terminated federal committee)
Tea Party (a minor political party/party executive committee)

MUR: 6361

I. INTRODUCTION

This matter was generated by a complaint alleging that the Tea Party [Florida]¹ lacked a federal committee or account — suggesting that the costs it incurred in connection with its federal activity may give rise to violations of the registration and reporting requirements of the Federal Election Campaign Act of 1971, as amended (the “Act”) — and asserting that two outdoor electronic billboards funded by Tea Party [Florida] constituted “illegal contributions” to the federal candidates because those billboards apparently were financed with state and corporate funds.²

In its response, the Tea Party [Florida] concedes that it paid for two billboards and printed materials in connection with the 2010 election.³ The Response appears to claim, however, that the Respondent entity had no reporting obligations with the Commission because,

¹ The Complaint identifies the Respondent as the “Florida Tea Party,” consistent with the website address displayed on the billboards: www.FloridaTeaParty.us. Nonetheless, the Response reflects that the appropriate Respondents are the “Tea Party,” an entity that has qualified as a minor party under Florida law and registered as a party executive committee with the Florida Division of Elections, and the “Tea Party,” a committee that registered and then terminated as a federal committee. The activity at issue here primarily involves the former entity, which as a convenience the Commission refers to as the Tea Party [Florida]. The Commission refers to the previously registered federal committee as the Tea Party [Federal] where appropriate.

² Compl. at 1. The Complaint also refers generally to “multiple rule violations” without specifying the nature of those additional alleged violations. *Id.*

³ Frederic O'Neal, the treasurer of the now-former Tea Party [Federal] and then-chairman of the Tea Party [Florida], filed a sworn Response as counsel for those entities. *See Resp.* It contends that its independent expenditures were permissible, however, as a result of the holding in *Citizens United v. FEC*. Resp. ¶ 16; 130 S. Ct. 876 (2010).

1 after registering as a “national party committee” with the Commission, the entity concluded that
2 it does not qualify as a “national committee” or a “political party” and thus sought approval from
3 the Commission to terminate.⁴

4 The registration and reporting obligations of the Tea Party [Florida] and the type of funds
5 that it may use for federal election activities depend on how the entity is characterized under the
6 Act and relevant Commission regulations. As described below, while the activities of the Tea
7 Party [Florida] resemble in some respects those of a State party committee or organization, other
8 circumstances suggest that the Tea Party [Florida] may not be such an entity. Moreover, even if
9 the Tea Party [Florida] met the test for political committee status, it appears that the Tea Party
10 [Florida] engaged in relatively limited activity in 2010 and 2011. Accordingly, the Commission
11 exercises its prosecutorial discretion to dismiss the allegation that the Tea Party [Florida]
12 impermissibly used non-federal funds to conduct federal election activity and the allegation that
13 the Tea Party [Florida] violated the Act by failing to register and report with the Commission as
14 a political committee.⁵

15 Furthermore, the Tea Party [Florida] failed to report the cost of a billboard and certain
16 other printed materials that contained express advocacy, a violation of 52 U.S.C. § 30104(c)
17 (formerly 2 U.S.C. § 434(c)). The disclaimers contained in those materials also lacked the
18 appropriate authorization statements, a violation of 52 U.S.C. § 30120 (formerly 2 U.S.C.
19 § 441d) and 11 C.F.R. § 110.11. Nonetheless, given the relatively low amount in violation, the
20 Commission dismisses those allegations as well.

⁴ Resp. ¶ 17. The termination request was granted on March 24, 2010.

⁵ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

1 Finally, the Commission finds no reason to believe that the Tea Party [Federal] and
2 Frederic O'Neal in his official capacity as treasurer violated the Act or Commission regulations
3 because that entity did not engage in any of the challenged activities of the Tea Party [Florida], a
4 separate juridical entity.

5 II. FACTUAL AND LEGAL ANALYSIS

6 A. Factual Background

7 The Tea Party [Florida] qualified as a minor political party under Florida state law on
8 August 14, 2009. It was registered with the Florida Division of Elections as an executive party
9 committee until October 13, 2011, when it notified the Division of Elections that it had
10 dissolved. The Tea Party [Florida]'s amended constitution, filed in connection with its
11 submission to be a minor party, lists Frederic O'Neal as the Chairman and sole member of its
12 Executive Committee, which consisted of a Chairman, Treasurer, and Secretary.⁶

13 Soon after it registered as a minor political party in Florida, the Tea Party [Florida]
14 sought recognition with the Federal Election Commission. O'Neal filed a Statement of
15 Organization with the Commission on December 28, 2009, designating the Tea Party [Federal]
16 as the national committee of the "Tea Party" and listing himself as treasurer. The Tea Party
17 [Federal] later sought to terminate as a federal political committee, following receipt of a
18 Request for Additional Information ("RFAI") from the Reports Analysis Division ("RAD").⁷
19 The termination request letter represented that "there has been no activity for the Tea Party

⁶ In the Committee's Amended Constitution, the Executive Committee is defined as a committee of the Tea Party that consists of the Chair, Secretary, and Treasurer officeholders. Frederic B. O'Neal holds all three positions. See Tea Party Amended Constitution.

⁷ The RFAI indicated, in relevant part, that the Tea Party [Federal] must petition the Commission through an advisory opinion to determine whether it satisfied the criteria for "national party status," citing 52 U.S.C. § 30101(4) (formerly 2 U.S.C. § 431(4)) and Advisory Opinion 1995-16 (U.S. Taxpayers Party).

[Federal] since the filing of the Statement of Organization.” RAD approved the termination request on March 24, 2010.

Nineteen individuals ran as Tea Party [Florida] candidates on the 2010 general election ballot in Florida, including three candidates for federal office,⁸ fifteen state candidates, and one local candidate. The state disclosure reports of the Tea Party [Florida] show that it accepted \$209,855 in in-kind contributions from August 13, 2009, through October 28, 2010, most of which were comprised of \$100,405 in legal services that O’Neal provided free of charge, and another \$98,300 in consulting and public relations services that Douglas Guetzloe, a Florida political consultant, donated through his company, Advantage Consultants (“Advantage”).

In addition to those in-kind contributions, the state reports of the Tea Party [Florida] covering the same period reflect \$122,272 in receipts and \$117,349 in disbursements.⁹ The receipts include corporate donations and other donations that would exceed the contribution limits of the Act. The reports do not reflect any contributions to federal candidates.

Following the 2010 election, the Tea Party [Florida] disclosed limited financial activity. From January to September 2011, it received approximately \$17,000 in contributions — \$15,000 of which were in-kind contributions from Advantage for “media consulting.” During the same period, it made approximately \$3,300 in expenditures, the majority of which involved bank and legal fees. Almost all of the post-election financial activity of the Tea Party [Florida] occurred from January to March 2011.

⁸ Two of these individuals, Margaret Dunmire and Randy Wilkinson, received and spent enough in contributions and expenditures to satisfy the Act’s definition of “candidate.” See 52 U.S.C. § 30101(2) (formerly 2 U.S.C. § 431(2)).

⁹ The Tea Party [Florida] filed a waiver in connection with its state disclosure report covering October 29 through December 31, 2010, an action that indicates that it had no activity in its campaign account during that period. See <https://doe.dos.state.fl.us/candidate/filing-campaign-reports.shtml>.

1 The Response represents that, after three federal candidates qualified with the Florida
2 Department of State to run as Tea Party [Florida] nominees for federal office in May 2010, the
3 Tea Party [Florida] “engaged in numerous expenditures for brochures, billboards, and other
4 printed material listing multiple names of various state and federal Tea Party candidates.”¹⁰ The
5 Response states that the Tea Party [Florida] paid Clear Channel Outdoor \$8,400 to rent two
6 digital billboards that rotated advertisements for various state and federal candidates.¹¹

7 Copies of photographs of a billboard submitted with the Complaint reflect that one or
8 more billboards expressly advocated the election of Margaret “Peggy” Dunmire and Randy
9 Wilkinson, two of the three federal candidates that ran as Tea Party [Florida] candidates in the
10 2010 general election.¹² The advertisement concerning Dunmire states, “Dunmire for U.S.
11 Congress,” prominently displays “www.floridateaparty.us” below that statement, and features
12 Dunmire’s photograph. A billboard advertisement concerning Wilkinson, depicted in
13 photographs attached to the Complaint, states, “Elect County Commissioner Randy Wilkinson,
14 Tea Party Nominee for Congress, District 12” and prominently displays the website
15 “www.elcctRandy.com” below that statement. Both advertisements included a logo apparently
16 associated with the Tea Party [Florida]. The Response states that the billboards referenced the
17 names of both state and federal candidates.¹³

18 As to the challenged printed materials, the Response represents that, like the billboards,
19 these materials “advertise[d] and advocate[d] for the election of several [state and federal]

¹⁰ Resp. ¶¶ 6, 7.

¹¹ *Id.* ¶¶ 9, 13-16. The Response included the rental contracts for the billboards.

¹² Compl. at 12-17.

¹² Compl. at 12-17.

¹³ Resp. ¶¶ 9.

1 candidates at the same time,” were paid for solely with funds of the Tea Party [Florida], and the
2 costs were not shared with any candidate.¹⁴ The Response provided a copy of a flyer or leaflet
3 that the Tea Party [Florida] had funded.¹⁵ That document lists all of the Tea Party [Florida]’s
4 state and federal candidates, including their addresses and websites where available, under the
5 heading, “Team Tea! The Tea Party 2010 Victory Candidates.” The document displays a “Tea
6 Party Candidate Pledge” and a list of “Tea Party Principles” adjacent to the list of candidates.
7 The same logo for the Tea Party [Florida] depicted on the billboard advertisements is also
8 featured throughout the document the Response provided. The Response did not provide copies
9 of any other printed materials or describe or quantify them.

10 The Response acknowledges that the Tea Party [Florida] accepted corporate contributions
11 that were deposited into the account from which the brochures, printed material, and billboards
12 were paid.¹⁶ It denies that the expenditures for these materials constituted contributions to
13 candidates.¹⁷ Instead, it contends that the Tea Party [Florida]’s payments were independent
14 expenditures because O’Neal — the chairman and sole member of the executive committee —
15 did not cooperate, consult, or act in concert with any of the candidates prior to making the
16 expenditures.¹⁸ The Response also maintains that the use of corporate money to fund the

¹⁴ *Id.* ¶¶ 11, 12, 17.

¹⁵ *Id.* ¶ 17.

¹⁶ *Id.* ¶ 12.

¹⁷ *Id.* ¶¶ 15, 16.

¹⁸ *Id.* ¶¶ 8, 9, 15.

1 expenditures was permissible in any event under *Citizens United*, which held that a corporation
2 may use its general treasury funds to make independent expenditures.¹⁹

3 The Response further denies that the Tea Party [Florida] was subject to any federal
4 registration or reporting obligations, asserting that it did not qualify as either a “national
5 committee” or a “political party” as defined at 52 U.S.C. §§ 30101(14) and (16) (formerly
6 2 U.S.C. §§ 431(14) and (16)), respectively. It cites Advisory Opinion 1995-16, the opinion that
7 RAD referenced in its RFAI, as support for that position.²⁰ Finally, the Response notes that the
8 Tea Party [Florida] disclosed all of its receipts and expenditures with the Florida Division of
9 Elections.²¹

10 **B. Legal Analysis**

11 1. The Commission Dismisses the Allegation that the Tea Party [Florida]
12 Used Non-Federal Funds for Federal Election Activity and Failed to
13 Register and Report as a Federal Political Committee
14

15 The Tea Party [Florida] admittedly financed electronic billboards that contained the
16 exhortations, “Dunmire for U.S. Congress” and “Elect County Commissioner Randy Wilkinson
17 . . . for Congress, District 12,”²² and thus contained express advocacy concerning two clearly
18 identified candidates for federal office.²³ Whether that fact imposed on the Tea Party [Florida]
19 any registration and reporting obligations, or limited the nature of the funds it could use to
20 finance the billboards, turns on whether the entity is considered a “political committee;” a State,

¹⁹ *Id.* ¶ 16 (citing *Citizens United*, 130 S. Ct. at 876).

²⁰ *See id.* ¶¶ 4, 14.

²¹ *Id.* ¶ 13.

²² Resp. ¶ 9.

²³ *See* 11 C.F.R. § 100.22(a) (recognizing that “any communication that uses phrases such as . . . ‘Smith for Congress’” expressly advocates the election of that candidate).

1 district, or local party committee or organization; or a legal “person” other than any of those
2 types of entities.²⁴

3 The Act defines a “political committee” as any committee, club, association, or other
4 group of persons which receives contributions or makes expenditures for the purpose of
5 influencing a federal election which aggregate in excess of \$1,000 during a calendar year.²⁵

6 The Act further provides that amount expended for Federal election activity²⁶ by a State,
7 district, or local party committee of a political party (or entities established, maintained,
8 financed, or controlled by them) must be made with funds subject to the Act’s limitations,
9 prohibitions, and reporting requirements — federal funds or a mixture of federal and Levin
10 funds.²⁷ The Act also provides that national party committees may not solicit, receive, or spend
11 funds that are not subject to the limitations, prohibitions, and reporting requirements of the Act.²⁸

²⁴ See 52 U.S.C. § 30101(4)(A), (8)(A), (9)(A), (11), (15) (formerly 2 U.S.C. § 431(4)(A), (8)(A), (9)(A), (11), (15)); 11 C.F.R. §§ 100.14, 300.30.

²⁵ See 52 U.S.C. § 30101(4)(1), (8)(A), (9)(A) (formerly 2 U.S.C. §§ 431(4)(A), (8)(A), (9)(A)). To address constitutional overbreadth concerns, the Supreme Court has held that only organizations under the control of a candidate or the major purpose of which is the nomination or election of a candidate may qualify as a political committee. *Buckley v. Valeo*, 424 U.S. 1, 79 (1976). A group that meets the definition of political committee must register with the Commission by filing a Statement of Organization within 10 days after it becomes a political committee. See *id.* § 30103 (formerly 2 U.S.C. § 433). A political committee must then file periodic disclosure reports with the Commission. See *id.* § 30104(a) (formerly 2 U.S.C. § 434(a)).

²⁶ 52 U.S.C. § 30125(b)(1) (formerly 2 U.S.C. § 441i(b)(1)); 11 C.F.R. § 300.32(a). The Act and Commission regulations identify four types of federal election activity (“FEA”): (1) voter registration activity during the period 120 days before a federal election; (2) voter identification, get-out-the-vote activity, or generic campaign activity conducted in connection with an election in which a candidate for federal office appears on the ballot; (3) a public communication that refers to a clearly identified candidate for federal office and that promotes or supports, or attacks or opposes a candidate for that office, regardless of whether the communication expressly advocates; and (4) services provided during any calendar month by an employee of a state, district, or local party committee who spends more than 25 percent of his or her compensated time during that month on activities in connection with a federal election. 52 U.S.C. § 30101(20) (formerly 2 U.S.C. § 431(20)); 11 C.F.R. § 100.24. The billboards at issue here are type three FEA because they are public communications, see 11 C.F.R. § 100.26, that promote federal candidates Dunmire and Wilkinson.

²⁷ 52 U.S.C. § 30125(b)(1) (formerly 2 U.S.C. § 441i(b)(1)). Commission regulations implementing this restriction apply to “State, district, and local party committees and organizations.” See, e.g., 11 C.F.R. § 300.33.

²⁸ 52 U.S.C. § 30125(a)(1) (formerly 2 U.S.C. § 441i(a)(1)); 11 C.F.R. § 300.10(a).

1 These two subsections "are related in that the [state and local committee provision] is intended to
2 prevent the evasion of the [national party provision]."²⁹

3 The activities of the Tea Party [Florida] resemble in some respects those of a State or
4 local party committee or organization (e.g., the Tea Party [Florida] gained Florida ballot access
5 for some of its candidates).³⁰ But other circumstances before the Commission suggest that the
6 Tea Party [Florida] may not be such an entity (e.g., the Committee does not possess an official
7 party structure; the Committee does not appear to have been responsible for the day to day
8 operations of a political party on a local level to qualify as a local committee of a political party;
9 and the Committee's role at the state level is unclear). Furthermore, the Tea Party [Florida]
10 appears to have engaged in a relatively limited activity in 2010 and 2011. Accordingly, the
11 Commission exercises its prosecutorial discretion to dismiss the allegation that the Tea Party
12 impermissibly used non-federal funds to conduct federal election activity in violation of
13 52 U.S.C. § 30125(b) (formerly 2 U.S.C. § 441i(b)).³¹

14 Similarly, even if the Tea Party [Florida] met the test for political committee status, it
15 appears that the Tea Party [Florida] engaged in relatively limited activity in 2010 and 2011.
16 Accordingly, the Commission dismisses the allegation that the Tea Party [Florida] violated

²⁹ See Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,065 (July 29, 2002) (Explanation and Justification) ("E&J"); *McConnell v. FEC*, 540 U.S. 93, 161 (2003) (recognizing that subsection (b) "is designed to foreclose wholesale evasion of [the] anticorruption measures" of subsection (a)).

³⁰ The Act and Commission regulations define a "State committee" as an organization that, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of that political party at the state level "as determined by the Commission." 52 U.S.C. § 30101(15) (formerly 2 U.S.C. § 431(15)); 11 C.F.R. § 100.14. A "local committee" is a committee that is responsible for the day-to-day operations of a political party at a local level such as a city, county, ward, or other State subdivision. See 11 C.F.R. § 100.14(b).

³¹ See *Heckler*, 470 U.S. at 821.

52 U.S.C. §§ 30103 and 30104(a) (formerly 2 U.S.C. §§ 433 and 434(a)) by failing to register and report as a political committee.³²

2. The Tea Party [Florida] Failed to Report the Cost of Certain Expenditures and to Include Appropriate Disclaimers on Its Billboards

The Act requires that a person that makes independent expenditures must report those expenditures to the Commission.³³ The Tea Party [Florida] failed to file reports when it made expenditures for billboards that expressly advocated the election of Dunmire and Wilkinson. It also may have been required to report the Tea Party [Florida] flyer included in the Response. The contracts submitted with the Response and the state disclosure reports of the Tea Party [Florida] reflect that it paid \$8,400 on June 18, 2010, to rent the two digital billboards for the period June 25 to July 22, 2010, which included the names of both state and federal candidates.³⁴ Thus, the amount spent advocating for federal candidates is less than \$8,400. Given the low amount at issue, the Commission exercises its prosecutorial discretion to dismiss the allegation that the Tea Party [Florida] violated 52 U.S.C. § 30104 (formerly 2 U.S.C. § 434) as a matter of prosecutorial discretion.³⁵

The Act also requires that a person that makes a disbursement for a communication that expressly advocates the election of a federal candidate must include a disclaimer stating whether or not it is authorized by a candidate, an authorized committee or an agent of either.³⁶ If the

³² See *Heckler*, 470 U.S. at 821.

³³ See 52 U.S.C. § 30104 (formerly 2 U.S.C. § 434); 11 C.F.R. § 109.10.

³⁴ The current record does not reflect the related production costs of the two advertisements at issue, but it is reasonable to conclude that the federal share of those costs would not have been significant.

³⁵ See *Heckler*, 470 U.S. at 821.

³⁶ See 52 U.S.C. § 30120 (formerly 2 U.S.C. § 441d); 11 C.F.R. § 110.11.

1 communication is not authorized by a candidate, an authorized committee, or an agent of either,
2 it must clearly state the name and permanent street address, telephone number, or World Wide
3 Web address of the person who paid for it and that it is not authorized by any candidate or
4 candidate's committee.³⁷

5 The Response maintains that the billboards and printed materials that the Tea Party
6 [Florida] financed carried proper disclaimers.³⁸ However, the disclaimers on the billboard
7 advertisements and printed materials do not include an authorization statement. Rather, the
8 billboard disclaimers simply read, "Political Advertisement paid for and approved by the Tea
9 Party" followed by the website address of the Tea Party [Florida]. Further, the disclaimer on the
10 printed material included with the Response simply reads, "Political Advertisement paid for and
11 approved by Tea Party." Nonetheless, in light of the minimal amount at issue, the Commission
12 also dismisses the allegation that the Tea Party [Florida] violated 52 U.S.C. § 30120 (formerly
13 2 U.S.C. § 441(d)) and 11 C.F.R. § 110.11 as a matter of prosecutorial discretion.³⁹

14 3. Finding as to the Tea Party [Federal]

15 The activities at issue in this matter were financed and conducted by the Tea Party
16 [Florida], a minor political party under state law, as evidenced by its state disclosure reports, and
17 they apparently occurred after RAD approved the federal committee's request to terminate.
18 Accordingly, the Commission finds no reason to believe that the Tea Party [Federal] and

³⁷ 52 U.S.C. § 30120(a)(3) (formerly 2 U.S.C. § 441d(a)(3)); 11 C.F.R. § 110.11(b)(3).

³⁸ Resp. ¶ 10.

³⁹ See, e.g., MUR 6164 (Mike Sodrel) (dismissing independent expenditure reporting violation where amount in violation was "less than \$10,000"); MUR 6163 (Houghton Co. Dem. Comm.) (dismissing independent expenditure and disclaimer violations where the federal portion of expenditures for newspaper inserts was \$255.38 and an additional \$1,482 in radio and newspaper advertisements were potentially federal expenditures); MUR 6170 (Tuscola Co. Dem. Comm.) (dismissing independent expenditure and disclaimer violations where the federal portion of expenditures for advertisements was approximately \$800); MUR 6404 (Stutzman) (dismissing disclaimer violation where the cost of the billboard at issue was approximately \$2,000).

- 2 as alleged in this matter.

1-800-4-A-M-I-N-I-O-O